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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-563**

13 **DIANA LYNN DUNN**  
90 Matisse Circle  
14 Aliso Viejo, CA 92656

**A C C U S A T I O N**

15 **Registered Nurse License No. 696929**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about February 8, 2007, the Board of Registered Nursing issued Registered  
24 Nurse License Number 696929 to Diana Lynn Dunn (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on October 31, 2014, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or  
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
following:

9 . . . .

10 (f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

12 . . . .

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

16 . . . .

17 (b) Use any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
19 dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,  
or self-administration of any of the substances described in subdivisions (a) and (b) of  
22 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
23 the conviction is conclusive evidence thereof.

24 . . . .

25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
27 made to a charge substantially related to the qualifications, functions and duties of a  
registered nurse is deemed to be a conviction within the meaning of this article. The  
28 board may order the license or certificate suspended or revoked, or may decline to  
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

#### REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 **COSTS**

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(December 7, 2011 Criminal Conviction for DUI on August 2, 2011)**

10 15. Respondent has subjected her license to disciplinary action under sections 490 and  
11 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related  
12 to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
13 follows:

14 a. On or about December 7, 2011, in a criminal proceeding entitled *The State of*  
15 *Nevada vs. Diana Lynn Dunn*, in East Fork Justice Court, County of Douglas, case number 11-  
16 811CR, Respondent was convicted on her plea of guilty of violating Nevada Revised Statutes  
17 484.379(1)(a), (1)(b) and/or (1)(c), driving or being in actual physical control of a vehicle while  
18 being under the influence of an intoxicating liquor, a misdemeanor.

19 b. As a result of the conviction, on or about December 7, 2011, Respondent was  
20 sentenced to 30 days in jail, with 28 days suspended. Respondent was ordered to complete 48  
21 hours of community service, attend a victim impact panel presentation, and complete DUI school.  
22 Respondent was further ordered to abstain from the consumption or possession of alcohol and  
23 drugs, to submit to a Fourth Amendment waiver, to use an interlock device if driving in the State  
24 of Nevada, and pay fees and fines in the amount of \$897.

25 c. The facts that led to the conviction are that on or about the afternoon of August  
26 2, 2011, a concerned citizen contacted the Douglas County Sheriff's Department to report a  
27 vehicle being driven in a dangerous manner. A sheriff's deputy caught up with the vehicle,  
28 driven by Respondent. He observed Respondent's vehicle weaving back and forth from the

1 number two lane to the road's shoulder, and partially crossing into the number one lane. The  
2 deputy conducted a traffic stop. Upon contact with Respondent, the deputy noted that  
3 Respondent had the odor of an alcoholic beverage emitting from Respondent. Respondent  
4 admitted she had consumed beers and took Paxil. When asked if she would submit to field  
5 sobriety tests, Respondent put her hands behind her back and invited the officer to take her to jail.

## 6 **SECOND CAUSE FOR DISCIPLINE**

### 7 **(Dangerous Use of Alcohol)**

8 16. Respondent has subjected her license to disciplinary action under section 2762,  
9 subdivision (b) of the Code for unprofessional conduct in that on or about August 2, 2011, as  
10 described in paragraph 15, above, Respondent used alcohol in a manner that was dangerous or  
11 injurious to herself, or to the public in that she operated a motor vehicle while impaired.

## 12 **THIRD CAUSE FOR DISCIPLINE**

### 13 **(Alcohol-Related Criminal Conviction)**

14 17. Respondent has subjected her license to disciplinary action under section 2762,  
15 subdivision (c) of the Code for unprofessional conduct in that on or about December 7, 2011, as  
16 described in paragraph 15, above, Respondent was convicted of an alcohol-related criminal  
17 offense.

## 18 **DISCIPLINARY CONSIDERATIONS**

19 18. To determine the degree of discipline, if any, to be imposed on Respondent,  
20 pursuant to California Code of Regulations, title 16, section 1445, subdivision (b), Complainant  
21 alleges that on or about January 7, 2002, in a prior criminal proceeding entitled *The State of*  
22 *Nevada vs. Diana Lynn Dunn*, in Tahoe Township Justice Court, County of Douglas, case number  
23 01-0999, Respondent was convicted on her plea of guilty of violating Nevada Revised Statutes  
24 484.379(1)(a), driving or being in actual physical control of a vehicle while being under the  
25 influence of an intoxicating liquor, a misdemeanor. Respondent was sentenced to 10 days in jail,  
26 with credit for six days, to be served on house arrest. Respondent was further ordered to  
27 complete 10 hours of community service, complete a DUI school, attend two victim impact panel  
28 presentations, and pay fees and fines in the amount of \$1,350.

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 696929, issued to Diana  
5 Lynn Dunn;

6 2. Ordering Diana Lynn Dunn to pay the Board of Registered Nursing the reasonable  
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
8 Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.  
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11

12 DATED: JANUARY 18, 2013

*Louise R. Bailey*  
13 LOUISE R. BAILEY, M.ED., RN  
14 Executive Officer  
15 Board of Registered Nursing  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant  
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